IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1100/2006

Decided on.11.7.2007

Sukh Ram. **…Petitioner**

Versus

Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court and others.

…Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes*

For the petitioner : **Mr. Subhash Sharma, Advocate..**

For the respondents **Mr. M.S. Chandel, Advocate General with M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals.**

Rajiv Sharma, J.

A challenge has been laid by way of this petition to the award dated 16.6.2006 passed by the Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 37/2001.

The brief facts necessary for the adjudication of this petition are that the State Government had made the reference to the Labour Court-cum-Industrial Tribunal, Dharamshala in the year 2001 to the effect whether workman's retrenchment could be effected without issuing show cause notice, salary, charge sheet, inquiry, lay off etc. In sequel to the reference made by the State Government, the petitioner (hereinafter referred to workman for convenience sake) filed a statement of claim. The

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

employer had also filed reply to the statement of claim. The Labour Court had decided the reference on 16.6.2006.

Mr. Subhash Sharma, Advocate appearing on behalf of the workman had strenuously argued that the award dated 16.6.2006 is not sustainable in the eyes of law.

The learned Advocate General had supported the award dated 16.6.2006.

I have heard the parties and perused the record.

The position which emerges from the pleadings of the parties is that the workman was engaged as Daily Wages Beldar with effect from 4.11.1987 under Irrigation and Public Health Division, Baggi, Tehsil Sadar, District Mandi. He discharged his duties interruptedly upto 1st May, 1990. He was retrenched with effect from 1st May, 1990 without following the mandatory provisions of the Industrial Disputes Act, 1947. The State had placed on record the copy of the man-days chart depicting therein the days for which the workman had worked. It is evident from the details of the man-days that the workman had completed 240 days preceding his retrenchment on 1st May, 1990. He made a representation to the authorities concerned on 11th June, 1999 claiming the protection of Section 25- H of the Industrial Disputes Act, 1947. The reference was made by the State Government in the year 2001. The Labour Court had not adjudicated upon the issues raised by the workman concerning his retrenchment. The Labour Court had decided the reference only on the question of delay and laches. The State Government had made reference in 2001 even though the retrenchment of the workman was effected on 1st May, 1990. The Labour Court should have considered the question of delay and laches only at the time of dealing with the relief.

The Hon'ble Supreme Court in ***Ajaib Singh versus Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another,*** (1999) 6 SCC 82 has held that the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the Industrial Disputes Act. The Hon'ble Supreme Court has further held that it is not the function of the Court to prescribe limitation where the legislature in its wisdom had though it fit not to proscribe any period. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the work man till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana is also of no help to him. In that case the High Court nowhere held that the provisions of Article of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided not any guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that**

> **"reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay".**

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had though it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court cannot be stretched to authorize them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purpose of invoking the jurisdiction of the courts/boards and tribunals under the Act."

The Hon'ble Supreme Court in ***Mahavir Singh Versus U.P. State Electricity Board and Others, (1999) 9 SCC 178*** has held as under:-

> **"In our view, the order passed by the High Court cannot be sustained. The services of the appellant Chowkidar were terminated by Respondent 1, the Board. The date of termination is 12-11-1976. He raised an industrial dispute though belatedly in March, 1983. Ultimately reference was made by the appropriate Government on 17-4-1984. The Labour Court adjudicated the reference and took the view that the termination was illegal. But considering the delay in raising the dispute, as a package 50% back wages were directed to be granted to**

the appellant till reinstatement. Respondent 1 carried the matter in appeal before the High Court under Article 226 of the Constitution of India. The High Court took the view that as the dispute was raised belatedly, the reference itself was incompetent though agreeing with the Labour Court that on merits the termination order could not be sustained and it was illegal. It is this order of the High Court which is in challenge before us.

Once the termination is held to be illegal, we fail to appreciate how the entire reference could have been rejected. The dispute lingered on for a number of years. That would not mean that the dispute had ceased to exist. It is, of course, true that belatedly the dispute was raised but that has been taken care of by the Labour Court by not awarding full back wages but only 50% of the back wages all throughout from the date of termination till reinstatement. Such order as passed by the Labour Court could not be said to be in any way uncalled for and illegal."

The Hon'ble Supreme Court has further held in ***Sapan Kumar Pandit Versus U.P. State Electricity Board and Others*****, (2001) 6 SCC 222** that the opinion as to the existence of the dispute has to be formed by the Government alone and none else. Their Lordships of the Hon'ble Supreme Court have held as under:-

"The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time-limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindle by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this sub-section itself to indicate that

the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or it apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complementary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government, it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which elapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed (sic) on the possibility of what another party would think, whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make a reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference, there is a presumption that in the opinion of the Government, there existed such a dispute."

The Hon'ble Supreme Court has held in ***U.P. State Electricity Board Versus Rajesh Kumar*, (2003) 12 SCC 548** that facts and circumstances of each are to be considered in dealing with the claims and appropriate reliefs to

be granted. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"Per contra, the learned counsel for the respondent workman in his arguments supported the impugned judgment. He submitted that the position of law, as regards making a reference of a dispute, is well settled by the decisions of this Court. According to the learned counsel, merely because there was delay in raising the dispute, reference itself was not incompetent; it is for the appropriate Government to make a reference on being satisfied as to the existence of the dispute; assuming that there is a delay in raising the dispute, that itself is not a ground to deny the relief to the workmen, but, depending on the facts and circumstances, the relief could be moulded. He added that this plea that the reference was not competent after delay of 19 years, was not raised before the Labour Court at all; for the first time it was urged before the high Court. He also pointed out that the appellant being in possession of the original document, nothing prevented it from placing it before the Labour Court, if the list produced by the workmen was not correct or names of workmen in the list of employees were not found. He also submitted that the appellant having sought time, failed to produce evidence, as is evident from the orders of the Labour Court. Under the circumstances, according to the learned counsel no fault can be found with the impugned judgment.**
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> **The Labour Court, on the basis of the evidence on record, has recorded a finding of fact that the respondent workmen did work for 240 days. This conclusion is based on the evidence of the workmen and the list of 82 employees, which included the names of the respondent workmen. It is also on record that the correctness of this list was not challenged before the Labour Court and the management did not produce any contra-evidence or the original records which it possessed to deny the claim or contention of the workmen. Non-consideration of the**

evidence of the Executive Engineer who was examined on behalf of the appellant, in our view, did not affect the case in any way for the simple reason that he was not in service on the relevant date i.e. the dates on which the services of the respondent workmen were terminated. It is also clear from the impugned judgment that the point with regard to the stale claim of the workmen was not raised before the Labour Court. For the first time it was sought to be urged before the High Court. We may also add that if the appellant was really aggrieved and serious as to the stale claim of the respondent workmen, it was open to the appellant management to question the very reference made by the State Government in the year 1997 itself. The validity of the reference was not questioned. Thereafter, the management participated in the proceedings before the Labour Court and suffered the award. The management further, unsuccessfully, challenged the award of the Labour Court before the High Court. From the award of the Labour Court it is clear that the relief granted to the workmen was only with regard to the reinstatement with continuity of service. The back wages were awarded only from the date of reference and not from the dates of termination of their services. This is how the Court has moulded the relief. We are told that when the proceedings were pending in the High Court, the respondent workmen are already reinstated.

It is also not disputed by the learned counsel for the parties that there is no period of limitation as is prescribed for the parties in making the reference. The facts and circumstances of each case are to be considered in dealing with the stale claims and appropriate reliefs are to be granted. We do not think it is necessary for us to examine the question of stale claims made by the learned counsel for the appellant in these cases, in the light of the facts narrated above and particularly, when the appellant did not challenge the order of reference made in the year 1997, at this stage. Thus looking from all angles, substantial justice is done in the matter. In this view, we decline to interfere

with the impugned judgment. Consequently, the appeals are dismissed. No costs."

Similarly, the Hon'ble Supreme Court has held in ***Shahaji Versus Executive Engineer, PWD,*** **(2005) 12 SCC 141** that even if there is delay, the Labour Court can always mould the relief to be granted to the workmen. The Hon'ble Supreme Court has further held that the burden to raise plea of delay is on the employer. In this judgment, the Hon'ble Supreme Court has noticed the earlier judgment rendered in ***Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society*****, (1999) 6 SCC 82.** Their Lordships have held as under:-

"We have heard counsel for the parties and we have also been taken through the judgments of this Court reported in Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society, Nedungadi Bank Ltd. v. K.P. Madhavankutty and Sapan Kumar Pandit v. U.P. SEB. Having gone through the judgments we have no doubt that the judgment of this Court in Ajaib Singh case lays down the law correctly. In the instant case there was no ground of delay urged by the management. Moreover, even if there was delay in making the reference to the Labour Court, if it came to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted or curtailed. In Nedungadi Bank case what was challenged before the High Court was the order making the reference. That was not a case where the Labour Court refused to entertain the dispute on the ground of delay. Having regard to the clear position in law we are left with no option but to allow this appeal and set aside the judgment and order of the High Court."

The Apex Court in ***GM, Haryana Roadways Versus Pawan Kumar***, (2005) 12 SCC 459 has held as under:

"The respondent workman raised a demand under Section 2-A of the Industrial Disputes Act for the first time before the Labour-cum-Conciliation Officer on 14.10.1995 i.e. after a period of almost four years. The dispute was referred to the Presiding Officer of the Industrial Tribunal-cum-Labour Court at Rohtak. By award dated 9.3.1999, the reference was answered in favour of the respondent workman and it was directed that the respondent be reinstated with continuity and full back wages. The aforesaid award was impugned before the High Court but the challenge was repelled by the impugned judgment and order of the High Court dated 24.4.2002 in CWP No. 6325 of 2002.

It will appear from the facts stated above that though the respondent was prevented from working by the appellant Roadways after December 1991 he did not raise a dispute till 14.10.1995. It is settled law that the mere factum of delay in raising a dispute by itself does not bring the dispute to an end. They delay in raising the dispute, however, may be taken into account in the matter of grant of relief".

Their Lordships of the Hon'ble Supreme Court in latest judgment in ***Asstt. Engineer, CAD, Kota Versus Dhan Kunwar, (2006) 5 SCC 481*** has held that so far as delay in seeking the reference is concerned, no formula or universal application can be laid and it would depend on the facts of each individual case.

The Apex Court in ***State of Punjab v. Anil Kumar***, JT 2007 (7) SC 559 has upheld the award passed by the Labour Court though the workman had approached the Labour Court after 13 years but back wages as directed by the Labour Court and affirmed by the High Court were modified. Their Lordships have held as under:

"Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.

In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour

Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.

At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.

In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified."

Accordingly the Court is of the opinion that the Labour Court should have decided the reference on its own merits more particularly by adjudicating whether the workman could be retrenched without following the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 or not and the question of delay and laches could be considered by the Labour Court while considering the relief.

Accordingly the writ petition is allowed. The award dated 16.6.2006 passed by the Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Dharamshala at Kangra is quashed and set aside. The Labour Court is directed to decide the reference afresh within a period of three months from today in view of the observations made hereinabove. The parties are directed to appear before the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala at Kangra on 4.8.2007

(Rajiv Sharma), Judge

July 11, 2007
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